

APPROVED

VIRGINIA RACING COMMISSION

MINUTES

OF

COMMISSION MEETING

APRIL 21, 2004

STATE CORPORATION COMMISSION  
TYLER BUILDING  
COURTROOM B  
1300 EAST MAIN STREET  
RICHMOND, VIRGINIA

In Attendance

Commission Members:

Anne D.W. Poulson, Chairman  
Peter C. Burnett, Vice Chairman  
Mark T. Brown  
Dr. George W. Rimler

Commission Staff:

Stanley K. Bowker, Executive Secretary  
Kimberly M. Carter, Office Administrator  
Nick A. Christner, Director of Operations & Enforcement  
R. C. Harden, DVM, Commission Veterinarian  
David S. Lermond, Jr., Director of Pari-Mutuels  
Marvin A. Sniegon, Director of Financial Management and Planning

Attorney General's Office:

Teresa C. Griggs

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At 9:42 a.m., Chairman Poulson called the meeting to order.

The minutes of the March 3, 2004 meeting were approved.

Chairman Poulson reported that she had attended the RCI/NAPRA Spring Meeting along with Mr. Bowker and Commissioner Rimler had attended the National Racing Compact Board Meeting.

Mr. Bowker elaborated on the RCI/NAPRA reorganization discussions and said the RCI Board had approved the recommendations of the negotiating committee but that the NPRA Board did not. He added the NAPRA Board put unreasonable conditions on RCI that could not be met at that time. As a result the prospects for continued negotiations were very slim unless that NAPRA Board did a complete turnaround on its position.

Mr. Bowker said that Commission staff will be doing a complete evaluation of both organizations to determine how Virginia can best be served.

During the discussion of the Thoroughbred Breeders Fund Subcommittee report, Chairman Poulson stated that approximately \$1,157,000 would be available in 2004. She offered the following motion:

“I move that the following recommendations of the Thoroughbred Subcommittee of the Virginia Breeders Fund Advisory Committee be accepted by the Virginia Racing Commission for the calendar year 2004:

First, the Commission designates the race meetings to be conducted at Colonial Downs, Charles Town, Laurel Park, Pimlico, and Timonium for breeders' awards;

Second, the Commission approves the payment of awards to breeders of Virginia-bred horses that win races at designated race meetings;

Third, the Commission approves the payment of awards to owners of Virginia Thoroughbred Sires that have sired Virginia-bred horses that win races at designated race meetings;

Fourth, the Commission approves running restricted overnight races for Virginia-bred Thoroughbred horses at the 2004 race meeting at Colonial Downs. \$50,000 was set aside for this program;

Fifth, the Commission approves the payment of owner awards to any registered Virginia-bred Thoroughbred finishing first through sixth in a non-restricted race at the 2004 race meet at Colonial Downs to an amount up to 40% of the share of the purse. The estimated cost of this is \$210,000;

Sixth, the Commission approves Virginia-sired Thoroughbreds being eligible for restricted races but not being eligible for breeder or stallion owner awards;

Seventh, the Commission approves the allocation of \$245,000 to fund seven stakes races at \$35,000 each, restricted to Virginia-bred Thoroughbreds to be run at Colonial Downs in 2004;

Eighth, the Commission approves \$50,000 for two two-year old stake races to be held in Delaware;

Ninth, the Commission will revisit in November paying owners' awards (purses) to Virginia-breds that win races at designated race meets other than Colonial Downs based on the availability of money."

The motion was unanimously approved.

Commissioner Burnett asked if there are any circumstances that available funds would not be available for the 40% bonus?

Mr. Sniegon replied there is almost \$40,000 more in the budget than what was paid in 2003 plus there is a reserve fund of \$200,000 that could be used if it were to happen. He added it is highly unlikely that the bonuses will exceed that 40%.

During the discussion of the Standardbred Blue Ribbon Committee, Commissioner Brown stated that he had met with several industry representatives on April 16 and a committee of nine (9) should be formed within ten (10) days.

During the discussion of the Marketing & Economic Development Committee, Chairman Poulson said that the Commission and the Virginia Tourism Corporation along with the private sector would be working together with Lauren Messmer of Commission & Tourism to review the marketing of the horse racing industry in Virginia.

Commissioner Rimler stated that the effort would develop ways to grow horse racing in Virginia and expand the agri-business contributions to the state. He added he will be putting together a working committee for the project.

It was moved, second and unanimously approved for Lauren Messmer work 3-4 months on a part time basis.

Mr. Bowker asked that the Commission ratify his approval of Colonial Downs' April Simulcasting schedule. He further recommended approval of the May Simulcasting schedule. Both were unanimously approved.

Mr. Bowker reported that he, Commissioners Burnett and Rimler had attended the Mid-Atlantic Racing Commissioners and Executive Directors meeting at Philadelphia Park. Much of the meeting was focused on the report from the Medication Consortium which has been working on a national uniform medication policy for the past year. He said many of the proposed rules have already been implemented in Virginia.

A major change, however, involves the use of furosemide without evidence of bleeding. The Medication Committee will be reviewing the proposed rules later this year.

Mr. Bowker also informed the Commission that SB 167 had been signed by the Governor.

During the Colonial Downs' report, John Mooney, President of the Maryland-Virginia Racing Circuit, told the Commission that stall applications for the 2004 thoroughbred meet are arriving daily and he expected to have many more applications than available stalls. He said the Racing Office would open on May 16 and the stable area would open between May 20-22. The track will be ready for training on May 24.

Capital improvements underway include remodeling the jockeys' quarters, gutters and down spouts are being added to some of the barns and drainage is being improved. He added the marketing plan is in place, that Davey Jones will again be the spokesman and a Secretariat bobblehead doll promotion are among the plans.

Chairman Poulson asked that a more detailed marketing and sponsorship plan be provided at the May Commission meeting and that the Virginia Derby Day would be a good opportunity to sell Virginia racing to the state's political leaders.

Addressing the new south Richmond satellite facility, Colonial Downs Counsel James Weinberg reported that the handle was slightly behind projections but the Broad Street facility had not lost as much handle as anticipated. He added the hope was to grow the Richmond handle by \$10 million when the new facility was added and the current two-facility handle was slightly above target.

As to the Vinton facility, Mr. Weinberg said that the due diligence has been completed and grading was starting (today). He said as soon as the plans are completed, a set would be sent to the Commission. He further added that the new facility remains on schedule for an October 1, 2004 opening.

Commissioner Rimler asked for the status of referenda to be scheduled this fall. Mr. Weinberg said Colonial Downs needs to schedule two by the end of the year. He said several locations in different parts of the state are being considered. He said once locations have been identified, petition drives would be scheduled probably in September.

Chairman Poulson convened an Informal Fact-Finding Conference regarding an application from Colonial Dows, L.P. and The Racing Channel, Inc. for advance deposit account wagering licenses.

Mr. Weinberg provided an overview of the Colonial Downs/The Racing Channel application and said it involved three concepts:

1. The proposed plan was to keep in Virginia the maximum amount of net revenue possible and the proposal is expected to provide 11-12% of handle as the net revenue.
2. The plan would provide as much content as available for a single provider; that Colonial had already negotiated with approximately 110 sources as part of simulcast agreements already in place.
3. Marketing dollars would be allocated in Virginia in areas not already served by the satellite facilities to build new patrons.

Colonial Downs President Ian Stewart outlined the support for the various forecasts Colonial had used in building its model of expenses and net revenues indicating most of the percentages were based on Colonial's historical simulcasting experience.

In response to questions from Commissioner on marketing issues, Mr. Stewart said while \$50,000 is allocated for annual marketing, \$125,000 in additional funds would be available initially because it would be a year or more before the full cable television budget would be needed. He further stated the marketing plan will not be significantly different than the plan used by Philadelphia Park with a heavy concentration on direct mail.

Joe Michaels of The Racing Channel said in addition to direct mail, there would be an upgrade to Colonial's web site, some newspaper ads would be run and sports talk radio, billboards and other media would be utilized.

Commissioner Burnett asked what the handle expectations were over time. Mr. Stewart said he believed that it would be \$25 million within a year or two. Commissioner Burnett then asked if the numbers were not that high--\$5, 10, 15 million--what would the net revenues be? Mr. Stewart said they would still be in the 12% range.

Commissioner Rimler asked if the percentages in the Colonial forecast were guaranteed? Mr. Stewart replied that he could not guarantee that the numbers won't change based on actual experience; however, the effective takeout rate and host fees at Colonial have not deviated much in the past five years.

Chairman Poulson asked what affect the possible fee to Maryland Jockey Club will have on the net revenues? Mr. Stewart said whatever the fee is will come off the top before the balance is shared with the horsemen.

John Dixon of The Racing Channel said his company has the infrastructure in place and there will not be a lot of additional expense in adding Colonial Downs to its system which hubs in Oregon. He said The Racing Channel takes wagers from every state but a significant part of its handle is international. He added that his company is very active in television production which will be part of the Colonial operation.

Mr. Weinberg said once licensed, considerable work will need to be done including making Colonial Downs' system redundant, the web site rebranded, bank accounts opened, software developed, training and other start-up issues. He said realistically it probably will take 60-90 days, but everything should be up and running by August 1, 2004 at the outside, hopefully before then.

Mr. Stewart said he wanted to emphasize that he welcomes competition and has never thought any differently. However, how it is done is the issue. The Colonial Downs model provides 11-12% for the industry and Colonial is willing to enter into agreements with similar percentages or slightly less.

In regard to negotiations with the other account wagering companies, he stated that for two companies, they are far apart; for one the issues have been narrowed but there still are fundamental differences; for the fourth, dialog is continuing with some economic issues close to being resolved but there are larger management issues.

Commissioner Rimler stated he is concerned about giving the customers choice, that if a company has the best product it should not be worried about competition. If not then it must improve its product. He then asked if any of the applicants know of any place where a citizen has the choice of only one vendor.

Mr. Dixon said he could not think of any state where that is happening.

In conclusion, Mr. Weinberg said Colonial Downs/The Racing Channel application satisfies all of the statutory and regulatory requirements and should be approved. He said the application is complete including an agreement with the horsemen organizations.

Frank Petramalo, Vice Present of the Virginia Horsemen's & Benevolent Association, said his organization supports the application and that it is essential to get going now. Account wagering revenue has been factored in for this year's purses and he had hoped account wagering would have been already on line. Now it looks like August 1. Even though there are issues with some of the other applications, they should not delay this approval.

Heather Goodwin of Oak Ridge Racing Associates said she thought the purpose of racing in Virginia was to grow the industry and to increase money for purses and breeding. She said she feared that Colonial Downs may be getting a bigger percentage but is concerned about what is going to hold it to growing racing.

Victor Gallo, general counsel for YouBet, Inc., said there is considerable confusion about rate structure. He said because of various takeout rates and other understated expenses including host fees, 12% really is not being offered by the license applicant.

He further stated content should be a concern. He added that the applicant has said nothing about having the Magna tracks, Churchill Downs and the New York Racing Association, the most popular for account wagering customers. He also said The Racing Channel does not currently have the Magna tracks and is down nearly 50% in handle for the first Quarter of 2004.

Mr. Gallo said he was personally offended by the cannibalization remarks made by Colonial Downs because his company has been paying source market fees throughout the country to protect track customers. He also stated YouBet is paying the fees necessary to provide the best content available for its customers.

Finally he said all he asks is a level playing field, that it would be great if all he needed was his own consent to operate in Virginia and, if given the opportunity, YouBet can grow net revenue for Virginia racing.

John Hindman, Vice Present & General Counsel for TVG, said TVG has been working very hard trying to get account wagering off the ground in Virginia but that it has been a very long, slow process. Now it seems the process is moving ahead without a fair hearing for the other applicants.

Mr. Hindman stated that TVG has a compelling business, is very committed to live racing, it has access to the best product, is not afraid of competition and in fact it looks forward to it. He said the applicant has said nothing about how to penetrate the market while TVG is geared to expanding the audience for racing through its extensive cable television programming.

Finally, Mr. Hindman said TVG has exclusive rights to a number of signals from major tracks in the country. He added the agreements are very important to TVG and it intends to protect those rights.

Commissioner Burnett asked if TVG is deployed in Virginia does that mean the other account wagering companies will not have access to TVG product? Mr. Hindman said YouBet and AmericaTab already have agreements in place for TVG product.

Todd Bowker, General Manager of AmericaTab, said he has the same concerns the other representatives have expressed about the licensing process. He said that AmericaTab has offered a very competitive deal and it has been summarily rejected. He especially questions the numbers put forth by Colonial Downs in its application.

He said the \$25 million handle number is not realistic, that it might grow to that level over time but not any one of the applicants would reach that number in year one.

He further stated Colonial's expected blended takeout is very high and that AmericaTab is typically 19.75-20% every month. He added that Colonial's blended host fees are considerably too low especially with the large volume of wagering on the internet where host fees are typically higher.

He said those numbers are why Colonial and The Racing Channel, in response to the previous question from Commissioner Rimler, could not guarantee their numbers.

Mr. Bowker said he would like to point out that the interactive voice activation system (IVR) in use at the Oregon hub where Colonial Downs/The Racing Channel will be operating is owned by AmericaTab and no one from Colonial Downs or The Racing Channel has contacted AmericaTab about leasing that equipment for the Colonial Downs operation.

Finally, he stated that Colonial Downs' willingness to sign agreements with the other account wagering companies similar to its arrangement with The Racing Channel on the surface is noble and may be the right thing to do. But he believes that if the Colonial Downs numbers in its application were accurate, that The Racing Channel would want to do the account wagering itself rather than sign a deal that nets it about one-third of what it could receive on its own.

Commissioner Burnett asked what his expectations were for overall account wagering handle in Virginia. Mr. Bowker said he could only speak for AmericaTab, but he would be happy with \$5 million in the first year and AmericaTab does not have Magna tracks at this time.

Representing XpressBet, Gregg Scoggins, National Director of Regulatory Affairs for Magna Entertainment, said he was going to be brief and echo the comments of the other account wagering representatives.

Tim Capps, Vice President of the Maryland Jockey Club (MJC), said he wanted point out that the Management Agreement between Colonial Downs and MJC contains provisions in which the two parties are required to swap simulcasting signals. But he said that provision only applies to Laurel and Pimlico, Colonial Downs and its satellite wagering facilities. It is silent on account wagering, therefore subject to negotiations.

In summary, Mr. Weinberg addressed the following:

1. Estimate of host fees. He said Colonial Downs has contracts in place that will preserve the price structure. Colonial Downs' experience could be different because it is only accepting wagering from Virginia residents.
2. Maryland tracks. Either the Agreement covers account wagering or it doesn't and will have to be left up to the parties involved.
4. Takeout. Colonial has agreements with 110 tracks and has historical experience.
5. Projections. At this time, they are anyone's best guess. There really has been no marketing effort so we are flying under the radar screen. Why does it matter? This is Colonial Downs' business model and we are ready to begin.
6. Access to AmericaTab's IVR system. The Racing Channel's interpretation of their agreement is different but with only 1% of the handle going through that system, there is no material problem if they start business without it.

7. Business model. Colonial Downs seeks to return the highest percentage of handle possible to the industry.

Finally, Mr. Weinberg said all of the legal requirements have been met and asked for approval of the account wagering license for Colonial Downs and The Racing Channel.

Chairman Poulson stated, "In accordance with the provisions of Section 2.2-3711 (A)(7) of the Code of Virginia, I move that the Commission go into closed meeting for the purpose of consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Commission, and consultation with legal counsel employed or retained by the Commission regarding specific legal matters requiring the provision of legal advice by such counsel regarding the application of Colonial Downs and the Racing Channel for an advance deposit account wagering license." The motion was approved.

Returning from closed meeting, Vice Chairman Burnett stated, "I move the adoption of the following resolution:

"Whereas the Virginia Racing Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

"Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

"Now, therefore, be it resolved, that the Virginia Racing Commission certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Commission." All Commissioners voted aye.

Vice Chairman Burnett asked if there were any comments on the advance deposit account wagering application by Colonial Downs and The Racing Channel.

Commissioner Rimler said that while he was going to vote for the license he has a number of concerns. He said he believes it is in the best interest of the people of Virginia that there be more than one licensee, that one licensee cannot grow the market by getting new customers into racing which is the charge of the Commission and the industry. He added that he felt the people at Colonial Downs deserve a chance but that he also felt to some extent that they are being very short sighted in growing the industry.

Further, Commissioner Rimler said he did not believe having one licensee will fly with the legislature. He added that in the public interest Colonial Downs needs to understand that he will try if it can't be done with them, to do it without them to make certain that there will be other account wagering providers within the state at an early date.

Commissioner Brown said he would like to reiterate everything Commissioner Rimler has said and added competition is needed to promote account wagering in the state if it is going to grow. He said when it comes time for relicensing in December, we will have a better idea of the real numbers.

Chairman Poulson said she too intends to vote for approval of the license but that she has two concerns.

Her first concern involves the approach to getting into the Virginia market with its relatively uneducated fan base. She is concerned that the marketing plan needs to be more innovative and beyond the direct marketing campaign the applicants had discussed.

She added, the second issue involves content to be offered to the Virginia account wagering customers. While the applicant indicated it has agreements in place for 110 tracks, she said she can only hope that they can keep those in place and continue to offer the product that is necessary to attract customers to the system.

Vice Chairman Burnett said he agreed with the other Commissioners on the issue of competition and that he believes the Legislature anticipated there would be competition. He added that no one really anticipated that Colonial Downs would be wearing two hats. While there may not be anything wrong with that, he added that, it puts a very strong requirement on Colonial Downs to separate their roles and be careful to negotiate in good faith as a track operator with the other potential licensees and not let their own self interests as a competitor in account wagering overshadow their duty of fair dealing. He also said that Virginia needs the maximum saturation possible and he does not believe any single operator can provide that.

A second concern, Vice Chairman Burnett said, involves pricing. He said everything cannot be measured strictly in dollars. Every account wagering company has something that may help promote racing in Virginia and intangible benefits also are valuable and should be taken into consideration in negotiations.

Issues involving the Final Order were discussed, including the requirement for a bond or letter of credit in the amount of \$250,000 after which Commissioner Brown moved that the Commission grant a license to Colonial Downs and The Racing Channel to conduct account wagering, subject to the conditions set forth in the Order that were discussed. Chairman Poulson seconded the motion and all Commissioners voted aye.

Contracts between Colonial Downs and The Racing Channel, Colonial Downs and the Virginia Horsemen's Benevolent & Protective Association and Colonial Downs and the Virginia Harness Horse Association also were unanimously approved.

The next meeting is scheduled for May 19, 2004. Meetings in June and July will be scheduled in conjunction with the live thoroughbred meet at Colonial Downs.

There being no further business before the Commission, the meeting adjourned at 2:50 p.m.